

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

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In the Matter of

800 Data Base Access Tariffs and the
800 Service Management System Tariff

and Provision of 800 Services

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CC Docket No. 93-129

CC Docket No. 86-10

COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") hereby submits its comments on the petitions for reconsideration filed in the above-captioned proceeding¹ by AT&T Corp. ("AT&T") and MCI Telecommunications Corporation ("MCI").² In their petitions, AT&T and MCI ask the Federal Communications Commission ("Commission") to reconsider its Report and Order by ordering the affected local exchange carriers ("LEC") to refund the cumulative amount of disallowed exogenous costs the LECs have recovered over the past three and one-half years.

Section 204(a)(1) of the Communications Act of 1934, as amended,³ -- the authority cited by both AT&T⁴ and MCI⁵ -- authorizes the Commission to order

¹ In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, CC Docket Nos. 93-129 and 86-10, Report and Order, FCC 96-392, rel. Oct. 28, 1996 ("Report and Order").

² Petitions for Reconsideration filed Nov. 27, 1996.

³ 47 U.S.C. § 204(a)(1).

⁴ AT&T at 4, n.9.

⁵ MCI at 2.

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refunds of “such portion of [the] charge for a new service . . . as by its decision shall be found not justified.”⁶ The authority granted by Section 204 is permissive, not mandatory:

Section 204 of the Act allows the Commission considerable discretion regarding whether to order rate refunds from carriers.⁷

The Commission is thus not obliged to order refunds in this case.

We will demonstrate below that U S WEST's potential refund liability -- the portion of its rates that the Commission found not to be justified -- is a relatively small sum for 1993, and somewhat larger amounts in 1995 and 1996; U S WEST has no liability for 1994. We will further show that, because of the effects of the Commission's price-cap regime, U S WEST has already refunded a portion of this potential liability.

U S WEST submits, however, that the Commission should order it to make no refund for any period after 1993. After a one-day suspension, the LECs' 800 data base access tariffs took effect on May 1, 1993; the Commission issued the Report and Order on October 28, 1996, nearly three and one-half years later. If the Commission had met its statutory obligation to conclude the proceeding within

⁶ 47 U.S.C. § 204(a)(1).

⁷ In the Matter of: Local Exchange Carrier Access Tariff Rate Levels, Bell Atlantic Telephone Companies Tariff F.C.C. No. 1; GVNW Inc./Management Bourbeuse Telephone Company Tariff F.C.C. No. 1, Memorandum Opinion and Order, CC Docket No. 88-554, Transmittal Nos. 284 and 21, FCC 93-399, rel. Aug. 27, 1993 ¶ 7. See also Las Cruces TV Cable v. F.C.C., 645 F.2d 1041, 1047 (D.C. Cir. 1981) (“[T]he permissive wording of the statute leaves refund decisions to the discretion of the Commission . . .”).

fifteen months,⁸ U S WEST would have incurred no refund liability beyond 1993. Moreover, U S WEST had “headroom” in its Trunking and Interexchange “baskets” in its 1995 and 1996 annual filings⁹ (the only annual filings that give rise to potential refund liability). Thus the revenue that U S WEST would have foregone in the Traffic Sensitive basket as the result of an earlier resolution could have been recouped via rate element increases in the Interexchange and Trunking baskets. To require a refund for any year beyond 1993 would deprive U S WEST of revenues it had every right to collect. U S WEST therefore believes the Commission should exercise its Section 204 discretion not to require U S WEST to make refunds for any period after 1993.

If the Commission requires U S WEST to make a refund here, it must calculate that refund properly. A proper determination will look nothing like what AT&T and MCI presented in their petitions.

The principal issue resolved in the Report and Order was the level of exogenous costs that the LECs could reasonably claim for the implementation and operation of 800 data base access. The Commission disallowed a substantial portion of those costs. The largest of those disallowances -- and the only relevant

⁸ At the time, Section 204(a)(2)(A) of the Communications Act (47 U.S.C. § 204(a)(2)(A)) obliged the Commission to issue an order concluding a rate proceeding within twelve months of the date the rates went into effect, unless the matter “raise[d] questions of fact of such extraordinary complexity that the questions [could not] be resolved within 12 months,” in which case the Commission had fifteen months to complete the task. (The Telecommunications Act of 1996 amended Section 204(a)(2)(A) by shortening the time for decision to five months.) Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁹ See Workpaper 1, attached hereto.

disallowance for our purposes here¹⁰ -- arose from the Commission's rejection of the methodology used by the LECs to separate their costs between the interstate and intrastate jurisdictions.¹¹

To remedy this situation, the Commission ordered each LEC to recalculate its Price Cap Index ("PCI") to reflect the disallowance.¹² After these adjustments, if a LEC's Actual Price Index ("API") exceeded its revised PCI the LEC must "file tariff revisions that will reduce the API to a level below the PCI."¹³ Thus the Commission found that the LECs' rates were "not justified" only to the extent that they had improperly inflated the LECs' PCIs above their APIs. And, it required the LECs to reduce rates only to the extent necessary to bring the API to a level not higher than the revised PCI.¹⁴ If, after the adjustment, a LEC's API remained at or below its PCI, the LEC had no obligation to change any rates.

This determination by the Commission effectively resolves the means of calculating any refunds the Commission might now order. Refunds are limited to the amount by which the disallowed costs caused a LEC's rates to exceed its revised PCI in any given year. That is the only portion of the LECs' rates that the

¹⁰ The Commission disallowed portions of the costs claimed by other LECs, but not those of U S WEST (see Report and Order at tables preceding ¶¶ 91, 103, 111, 117, 123, 126 and 137). U S WEST's only disallowance arose from the Commission's rejection of U S WEST's separations methodology.

¹¹ Id. ¶¶ 60-86.

¹² Id. ¶¶ 307, 316.

¹³ Id. ¶ 317.

¹⁴ In these Comments, the term "revised PCI" means, for any year, a LEC's PCI as revised to reflect the disallowances ordered in the Report and Order.

Commission has found “not justified” and it is the only amount the Commission can now order to be refunded. In effect, the Report and Order treated this as an overearnings situation, and the remedy for overearnings is to refund the amount of the overearnings.

AT&T and MCI would have the Commission order refunds equal to the amount of the disallowed costs,¹⁵ but that would be improper. If a LEC had sufficient “headroom” under its revised PCI in each of the years the rates at issue were in effect, those rates were perfectly lawful, and it is liable for no refunds. Similarly, if a LEC had any headroom in those years, its rates were unlawful only to the extent they exceeded the revised PCI, and that excess is the limit of the LEC’s refund liability. Indeed, the Commission found no specific rates to be unlawful, and those LECs who needed to reduce their rates were free to change any rates within the Traffic Sensitive basket to reduce their APIs as necessary.¹⁶

As shown in Workpaper 2, attached hereto, U S WEST had both situations noted above:

- The rates at issue went into effect on May 1, 1993. Those rates caused U S WEST’s rates to exceed its revised PCI by \$2,503,727 on an annual basis. On July 1 of that year, U S WEST’s 1993 annual filing took effect. As discussed below, that filing gave U S WEST sufficient headroom so that its rates did not exceed the revised PCI. Hence, the May 1 rates were unlawful only until July 1 (and only in part). U S WEST’s refund liability for that period is limited to one-sixth of the annual excess, or \$417,288.
- U S WEST’s 1993 annual filing resulted in over \$9 million of headroom above the revised PCI. While that annual filing was in effect, U S WEST

¹⁵ AT&T at 1; MCI at 2.

¹⁶ Indeed, U S WEST complied by reducing its rates for local switching; its 800 data base access rates are unchanged.

made other filings that increased or reduced its headroom. At all times, however, U S WEST's API remained below its revised PCI. U S WEST has no refund liability for this period.

- U S WEST's 1994 annual filing resulted in over \$3 million of headroom above the revised PCI. U S WEST has no refund liability for the period in which this annual filing was in effect.
- U S WEST's 1995 annual filing produced negative headroom in relation to its revised PCI. That is, while the 1995 annual filing was in effect (July 1, 1995, through June, 30, 1996), U S WEST's API exceeded its revised PCI by \$3,014,348 on an annual basis. That amount is the measure of U S WEST's refund liability for that period.
- U S WEST's 1996 annual filing also produced negative headroom in relation to its revised PCI. U S WEST's API exceeded its revised PCI by \$3,856,591 on an annual basis. As noted above, however, U S WEST has now revised its PCI to reflect the Commission's disallowances, and it has filed tariffs to bring its API down to a level at or below the revised PCI; those tariffs will become effective on December 12, cutting off U S WEST's refund liability at that point. Because the rates from the 1996 annual filing will have been in effect for a bit less than six months, U S WEST's refund liability for this period is limited to one-half of the annual excess (\$1,928,296).

U S WEST has already refunded a portion of these amounts. Under the Commission's price cap rules, U S WEST was required to "share" fifty percent of its 1993 earnings in excess of the rate of return ceiling prescribed by the Commission; it may be in that situation for 1996 as well. If U S WEST's rates had not exceeded its PCI in those years, its earnings -- and hence its "sharing" obligation -- would have been lower. Thus, U S WEST has already refunded a portion of its refund liability through the "sharing" mechanism.

The effects of "sharing" on U S WEST's refund liability are set forth below. (Though price cap annual filings are effective July 1 to June 30, "sharing" is calculated on a calendar-year basis. The amounts below reflect that difference.)

- For 1993, U S WEST's refund liability was \$417,288, as noted above. However, U S WEST was in a 50% "sharing" situation during calendar 1993, so it has effectively refunded half of its liability; its remaining obligation is \$208,644.
- As noted, U S WEST's 1993 and 1994 annual filings provided sufficient headroom to keep its API below the revised PCI. U S WEST thus has no refund liability for calendar 1994.
- As noted, U S WEST's 1995 annual filing produced negative headroom (relative to its revised PCI) of \$3,014,348; that filing was in effect for half of 1995, producing a potential refund for calendar 1995 of \$1,507,174. U S WEST was not in a "sharing" situation during calendar 1995.
- The 1995 annual filing remained in effect for the first half of calendar 1996; the potential refund for that period is \$1,507,174. For the second half of calendar 1996, the potential refund is equal to half the negative headroom (relative to its revised PCI) produced by its 1996 annual filing (\$3,856,591), or \$1,928,296. The total potential refund for calendar 1996 is thus \$3,435,470 (\$1,507,174 plus \$1,928,296). How much of that amount will be refunded through the "sharing" mechanism for 1996 will not be known until U S WEST determines its 1996 earnings.

The potential refund for each calendar year, as reduced by the amounts already refunded through the "sharing" mechanism, is set forth in Workpaper 3, attached hereto.

If the Commission were to exercise its discretion to order a refund, the best and simplest way to implement it would be simply to adjust U S WEST's PCI by the applicable amount in its 1997 annual filing. U S WEST would add interest to the amount of its remaining refund liability, as directed by the Commission.

To summarize, if the Commission determines that refunds are appropriate here, U S WEST believes its refund liability, based on available headroom in all baskets, should be --

- limited to 1993;

- calculated as described above; and
- reduced to reflect the amounts it has already refunded through the "sharing" mechanism.

If, however, the Commission rules that U S WEST must make refunds for 1995 and 1996, those refunds must be calculated as described above and should again reflect the amounts refunded through "sharing." The methodology proposed here would provide full compensation. Any additional refund would result in a windfall to U S WEST's interexchange-carrier customers.¹⁷

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December 11, 1996

¹⁷ With the issuance of an order on the Petitions for Reconsideration, the Commission should close the accounting order issued in this proceeding and terminate the docket.

800 DATABASE HEADROOM ANALYSIS TRUNKING AND INTEREXCHANGE BASKETS

FILING	TRUNKING				INTEREXCHANGE			
	PROPOSED PCI	PROPOSED API	PROPOSED REVENUE	ANNUAL HEADROOM	PROPOSED PCI	PROPOSED API	PROPOSED REVENUE	ANNUAL HEADROOM
1995 Annual Filing-Corr. Errata	83.7932	80.8761	\$817,390,186	\$29,481,935	91.7507	91.3160	\$51,697,876	\$246,102
1996 Annual Filing-Errata	82.8227	80.9638	\$898,649,442	\$20,633,685	91.0730	90.6508	\$49,805,110	\$231,964

800 DATABASE HEADROOM ANALYSIS TRAFFIC SENSITIVE BASKET

FILING	ORIGINAL				REVISED			
	PROPOSED PCI	PROPOSED API	PROPOSED REVENUE	ANNUAL HEADROOM	PROPOSED PCI	PROPOSED API	PROPOSED REVENUE	ANNUAL* HEADROOM
800 Database (May, 1993)	95.6768	95.2484	\$931,376,117	\$4,189,190	94.9924	95.2484	\$931,376,117	(\$2,503,727)
1993 Annual/LIDB Compliance	96.1845	94.0421	\$1,001,770,016	\$22,811,642	94.9082	94.0421	\$1,001,770,016	\$9,225,726
1993 GSF	86.2440	84.3228	\$898,236,833	\$20,464,917	85.0995	84.3228	\$898,236,833	\$8,274,027
Local Transport Restructure	86.2440	83.9463	\$894,225,876	\$24,476,321	85.0995	83.9463	\$894,225,876	\$12,284,694
Trunking Restructure	86.2440	83.9463	\$362,323,702	\$8,530,343	85.0995	83.9463	\$362,323,702	\$9,917,187
1994 Annual Filing-Modification	84.1231	82.3281	\$390,801,746	\$8,520,403	83.0067	82.3281	\$390,801,746	\$3,221,352
1995 Annual Filing-Corr. Errata	81.4347	80.8690	\$415,006,616	\$2,902,910	80.2816	86.3753	\$415,006,616	(\$3,014,348)
1996 Annual Filing-Errata	81.1075	80.6446	\$450,016,512	\$2,583,009	79.9535	80.6446	\$450,016,512	(\$3,856,591)

*Headroom after adjustment for 800 DB Exogenous Disallowance and 1989/90 Overearnings Required Headroom

Headroom Calculation: $[\text{Proposed Revenue} \times (1 + ((\text{PCI} - \text{API}) / \text{API})) - \text{Proposed Revenue}]$

Revised Filings:

- Revised 800 Database filing replaces the original exogenous of \$7,811,434 with allowed exogenous of \$1,119,585
- 1993 Annual revised headroom figures excluded \$6,364,731 included in actual headroom figure of \$15,590,457 for 1989/90 overearnings.
- Subsequent revisions also reflect the exclusion of the \$6,364,731 overearnings figure in the PCI/headroom calculations.

800 DATABASE LIABILITY

	Annual Headroom*	Liability	Liability Adjusted for Sharing
1993 ¹	(\$2,503,727)	\$417,288	\$208,644
1994	\$3,221,352	\$0	\$0
1995 ²	(\$3,014,348)	\$1,507,174	\$1,507,174
1996 ³	(\$3,856,591)	\$3,435,470	\$3,435,470

*Headroom after adjustment for 800 DB Exogenous Disallowance and 1989/90 Overearnings Required Headroom.

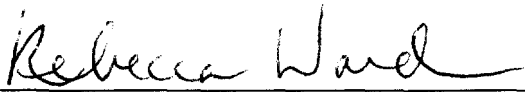
Headroom is revised figure on Workpaper 2

Notes:

- 1) 800 DB May 1993 in effect two months prior to 1993 Annual/LIDB Compliance when headroom covered disallowed exogenous for 800 DB. Consequently, liability is $\$2,503,727/12 \times 2 \text{ months} = \$417,288$. Half of the \$417,288 was returned via 50% sharing in 1993 leaving a liability of \$208,644 plus interest for 1993.
- 2) First half 1995 covered by headroom in 1994 Annual Filing -- Liability = $\$3,014,348/2 = \$1,507,174$ plus interest (Liability is 6 months of headroom shortfall in 1995 Annual Filing.)
- 3) Liability is $(\$3,014,348 + \$3,856,591)/2 = \$3,435,460$ plus interest. (This will be reflected in 1997 Annual Filing calculation dependent on whether USWC is in 50% sharing or 100% sharing.)

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 11th day of December, 1996, I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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